

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

Diamond Triumph Auto Glass, Inc.,

Plaintiff,

v.

Safelite Glass Corporation,

Defendant.

Civil Action No. 3:CV-02-0514

(Judge James M. Munley)

FILED ELECTRONICALLY

**DEFENDANT SAFELITE GLASS CORP.'S MOTION FOR PARTIAL
SUMMARY JUDGMENT ON COUNTS II AND IV**

Defendant Safelite Glass Corp. moves the Court as follows:

1. To dismiss Plaintiff's claims in Count II of the Amended Complaint on the grounds that neither Ohio nor Pennsylvania recognize a separate cause of action for breach of an implied duty of good faith and fair dealing where the plaintiff has also alleged a cause of action for breach of contract.

2. To dismiss Plaintiff's claims in Count IV of the Amended Complaint under the Maryland Consumer Protection Act, Md. Code Ann., Com. L, §§ 13-101 et seq., on the ground that Plaintiff, a non-consumer, does not have standing to sue under the Maryland statute.

3. To dismiss Plaintiff's claim in Count IV of the Amended Complaint under the Virginia Consumer Protection Act, Va. Code Ann. §§ 59.1-196 et seq., on the ground that Plaintiff, a non-consumer, does not have standing to sue under the Virginia statute.

The reasoning in support of this motion is more fully set forth in the accompanying memorandum of law.

Dated: April 29, 2003

Respectfully submitted,

/s/ Laura E. Ellsworth

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CERTIFICATE OF NON-CONCURRENCE

I, Charles A. Shea III, certify that, in accordance with Local Rule 7.1, I sought concurrence from Charles J. Lloyd, plaintiff Diamond Triumph's counsel of record, for dismissal of Diamond Triumph's claims under Counts II and IV of the Amended Complaint, and that such concurrence was denied.

/s/ Charles A. Shea III

CERTIFICATE OF SERVICE

Laura E. Ellsworth, being first duly sworn, deposes and says that on the 29th day of April, 2003, true and correct copies of Defendant Safelite Glass Corp.'s Motion for Partial Summary Judgment on Counts II and IV and Certificate of Non-Concurrence in the above-captioned matter was served via United States mail, postage prepaid, upon the following counsel of record at their last known address:

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